must be considered in the context of a dispute before recognition under s 9(3)(c) of the Act. Whereas the one that arose in 1985 was a post-recognition dispute which could only arise under s 9(1A). Further, the 1983 and 1985 claims for recognition must be treated separately since they were made on a totally different basis. The 1984 decision of the Registrar was a blanket decision based on the respondent's claim for representation in respect of all workmen employed by the appellant not only in its quarries but also in the civil engineering and building contractors business. Whereas the second 1985 claim is for recognition on an entirely different basis. It was confined only to the quarry workers employed at the Batu Caves worksite.

In his 1984 decision, the Registrar was never requested nor did he address his mind specifically to the issue of competency of the respondent to represent only the quarry workers either at Batu Caves or Hulu Langat. Even in the letter of the Director-General dated 21 May 1987 it clearly shows that the Registrar was merely reaffirming his earlier decision made in respect of the respondent's first claim in 1983 (see p 121 of the appeal record). The letter does not indicate at all that the Registrar had made a review of his 1984 decision on the basis of the limited nature of the second claim in 1985 and, as such, it must be held that no decision has in fact been made by the Registrar as to the competency of the respondent to represent any of the quarry workers employed by the appellant either at the Batu Caves or Hulu Langat quarry. On the contrary, the fact that the Director-General in March 1987 took cognizance of the respondent's application for conciliation under s 18 over the dispute on the collective agreement, is additional proof that the 1985 recognition had been validly accorded. There is no suggestion at all that the Director-General had made a mistake in this respect.

In our judgment, the appellant cannot use the Registrar's decision in respect of the first 1983 claim for recognition for the purpose of revoking or withdrawing unilaterally a recognition accorded in the second 1985 claim, particularly after negotiation for collective agreement had been going on for nearly a year and had reached final agreement. To allow the appellant to do so is not only inequitable but also contrary to the intention of the legislature in s 12 which allows a trade union to make a fresh claim for recognition even in a situation where the Minister has made a final decision against recognition provided six months had elapsed from the date of such decision. In the present appeal, more than six months had elapsed when the 1985 claim was made, and for reasons already stated, we see no reason why the order of the learned trial judge should be disturbed.

We therefore rule that on the facts of the present case the appellant cannot after according recognition to the respondent under s 9(3)(a) of the Industrial Relations Act revoke or withdraw such recognition unilaterally on account of an earlier decision of the Registrar pertaining to a distinct and separate application for recognition. The appeal is accordingly dismissed with costs, and we also order that the deposit be paid to the respondent to account of taxed costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok; P Kuppusamy & Co.*

Reported by *Prof Ahmad Ibrahim*

Chai Cheon Kam v Hua Joo Development Co Sdn Bhd

HIGH COURT (KUCHING) – SUIT NO KG 218 OF 1986
HAIDAR J
25 MARCH 1989

Civil Procedure – Summary judgment – Application for – Affidavit in support of application – Whether deficient for want of mandatory compliance with O 14 r 2(1) of Rules of High Court 1980 – Rules of High Court 1980, O 14 r 2(1) & Form 18 para 1

The plaintiff filed a summons-in-chambers under O 14 r 1(1) of the Rules of the High Court 1980 that final judgment be entered against the defendant and in support thereof, he affirmed an affidavit. Paragraph 2 of the plaintiff's affidavit reads: 'I crave leave to refer to the plaintiff's amended statement of claim amended on 4 August 1988, the defendant's defence dated 18 August 1988 and the plaintiff's reply dated 28 August 1988.' The court thus had to decide whether the affidavit had sufficiently complied with the Rules.

Held, dismissing the application:

(1) The manner in which an application under r 1 of O 14 of the Rules of the High Court 1980 must be made is prescribed under r 2(1). One of the mandatory requirements that an affidavit in an O 14 application must satisfy is that it must verify the facts on which the claim or part of a claim to which the application relates is based.

(2) By way of comparison between para 2 of the affidavit and para 1 of Form 18 of the Rules of the High Court 1980, it cannot be said that the plaintiff has sufficiently complied with Form 18 as to the verification of facts on which the claim or part of a claim to which the application relates is based other than perhaps satisfying the second part of para 1 in Form 18.

Cases referred to

1 *Tan Tik Sing* v *Gomez Development Co Sdn Bhd* [1979] 2 MLJ 78 (refd)
2 *May* v *Chidley* [1894] 1 QB 451 (refd)

Legislation referred to

Rules of the High Court 1980 O 14 r 2(1), Form 18

June Chan for the plaintiff.
Fabian Lim for the defendant.

Cur Adv Vult

Haidar J: The plaintiff, Chai Cheon Kam alias Tsai Chon Kam, filed a summons-in-chambers dated 2 November 1988 (encl 46) under O 14 r 1(1) of the Rules of the High Court 1980 ('RHC') that final judgment be entered against the defendant as prayed for in the plaintiff's statement of claim dated 22 May 1986 as amended on 4 August 1988 and in support thereof, he affirmed an affidavit. The manner in which an application under r 1 of O 14 of RHC must be made is prescribed under r 2(1) which reads:

> 2(1) An application under rule 1 must be made by summons supported by an affidavit in Form 18 verifying the facts on which the claim, or the part of the claim, to which the application relates is based and stating that in the deponents's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of damages claimed.

In an application under O 14, the affidavit must satisfy the following three requirements:

(a) It must be made by the plaintiff or by any person duly authorised to make it and who can swear positively to the facts;
(b) it must verify the facts on which the claim or part of a claim to which the application relates is based; and
(c) it must state the deponent's belief that there is no defence to that claim or part, or no defence except as to the amount of any damages claimed.

If the three requirements mentioned are satisfied then the court or a judge can be said to have jurisdiction to hear the application as the clear provisions of O 14 are mandatory and they must be complied with. (See *Tan Tik Sing* v *Gomez Development Co Sdn Bhd.*[1]) It is then pertinent to consider the contents of the affidavit of Chai Cheon Kam alias Tsai Chon Kam to see whether the three requirements are satisfied.

It would appear that requirement (a) is satisfied as the affidavit was sworn to by the plaintiff personally and similarly requirement (c) too is also satisfied (see para 13 of the affidavit). Requirement (b), I think, needs scrutiny by the court as to whether the deponent has sufficiently complied with it. Now, the relevant paragraph relied on by the affidavit of the plaintiff for the purpose of satisfying requirement (b) is para 2. Paragraph 2 reads:

> I crave leave to refer to the plaintiff's amended statement of claim amended on 4 August 1988, the defendant's defence dated 18 August 1988 and the plaintiff's reply dated 28 August 1988.

Paragraph 1 in Form 18 of RHC to which the affidavit must comply, reads:

> 1 The defendant ... is, and was at the commencement of this action, justly and truly indebted to (me, or the abovenamed plaintiff) in the sum of ... for the ... The particulars of the said claim appear by the indorsement on the writ of summons in this action.

By way of comparison between para 2 of the affidavit and para 1 of Form 18 it cannot be said that the plaintiff has sufficiently complied with Form 18 as to the verification of facts on which the claim or part of a claim to which the application relates is based other than perhaps satisfying the second part of para 1 in Form 18. It is true that the affidavit need not set out all the particulars, nor verify the facts except by reference to the statement of claim (*May* v *Chidley*[2]) but the verification may be by reference to the facts stated in the statement of claim, thus: 'the defendant is justly and truly indebted to the plaintiff in the sum of ... for the ... (set out the short particulars).' In my opinion, the plaintiff has failed to sufficiently comply with Form 18 as to the verification of facts and hence failed to satisfy requirement (b) and in the result the plaintiff's application for summary judgment under O 14 of the RHC was therefore deficient for want of mandatory compliance with r 2(1) and I ought therefore to dismiss the application with costs and I do so order accordingly.

Application dismissed.

Solicitors: *Satem, Sagah & Chai*; *Chua & Co.*

Reported by *Ng Sheau Jiuan*

Ansa Teknik (M) Sdn Bhd v Cygal Sdn Bhd

HIGH COURT (JOHORE BAHRU) – COMPANIES (WINDING-UP) NO 42-13 OF 1988
LC VOHRAH J
22 MARCH 1989

Companies and Corporations – Winding-up – Civil suit filed by petitioner – Application for summary judgment – Dispute as to amount claimed – Application for summary judgment dismissed – Discontinuance of civil suit without leave – Application for winding-up – Application for injunction restraining further winding-up proceedings – Petitioner proceeded with advertisement – Application to strike out petition – Whether application properly made – Companies Act 1965, s 218

Civil Procedure – Winding-up petition – Application to strike out – No reasonable cause of action – Abuse of the process of the court – Whether application properly made – Rules of the High Court 1980, O 18 r 19

This was an application by the respondent for the winding-up petition to be struck out under O 18 r 19 of the Rules of the High Court 1980 on the ground that it disclosed no reasonable cause of action and/or that it was an abuse of the process of the court.

The petitioner originally filed an action in CS No 23-1317-86 on 6 October 1986 through its former solicitors for the sum of $158,449.59 being allegedly the sum outstanding for the supply of granite. The respondent filed its statement of defence disputing this amount. The petitioner then filed an application for summary judgment which was heard and dismissed. Notice